IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 496 OF 2005

IN

SUIT NO. 2755 OF 2002

Kesarbai Maganlal Arjan .. Plaintiff.

vs.

Prakash Clothing Co. & Ors. .. Defendants.

Mr. S.A. Veerani for plaintiff.

Mr. Yogendra Kanchan i/by Paras Vira for defendants 3 & 5.

Mr. A.A. Desai for defendant no. 4.

None for defendant nos. 1 & 2.

CORAM : S.U.KAMDAR, J.

DATE : 23rd January,2006.

P.C.

. The present suit is filed for recovery of Rs. 50,000/- with interest thereon of Rs. 22,187.50. The total claim is for Rs. 72,187.50 The suit claim is based on promissory note which is at Exhibit A to the plaint. The plaintiff has tendered original promissory note. The defendants are served. The defendants nos. 1 and 2 are not appearing. Affidavit of service dated 16.1.2006 is

taken on record. The defendant nos. 3, 4 and 5 are appearing. The learned counsel for defendant nos. 3, 4 and 5 has raised a two fold defence. Firstly he has contended that the loan on promissory note is not permissible in case of a partnership firm. It can only be in cases of a company under the provisions of the Companies Act, 1956. The contention raised is totally baseless and without any merit. The provisions of the rules framed by the Reserve Bank of India and/or the provisions of Section 58 A of the Companies Act, 1956 do not apply in cases of friendly loan transaction with the partnership firm. Admittedly the said partnership firm is dissolved and, therefore, defendant nos. 5 and 6 are sued in their capacity as partners.

2. The second contention raised is that it is a deposit. On a plain reading of the promissory note it does not indicate that the said amount is given as a deposit as alleged and, therefore, also the said contention has no merit. The next contention is raised that under the Income-tax Act payment of Rs. 50,000/- cannot be made as under the provisions of the Income Tax Act, payment of more than Rs. 20,000/- has to be made by cheque. The aforesaid contention has also no merits. The next contention raised is that the present promissory note is bogus. On a plain reading of the promissory note I do not find any substance in the contention that the same

is bogus. There is no dispute that the promissory note is duly executed and there is a signature appearing on the partner of the firm. The next contention raised is that plaintiffs are money lenders and, therefore, it is a money lending transaction. The provisions of the Money Lending Act does not apply in the case of the amount lent and advanced to the defendants which is a firm. Original documents will be tendered by the plaintiffs by day after tomorrow. The same will be taken on record and marked Exhibit A. In light of the aforesaid, the summons for judgment is made absolute. Suit is decreed. No order as to costs.